IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.859 OF 2004
IN
NOTICE OF MOTION NO.3154 OF 2004
IN
L.C.SUIT NO.3644 OF 2004

Vinod Naresh Chavan).. Appellant
(Org.Plaintiff)

Versus

The Municipal Corporation of Greater Bombay)
).. Respondent
(Org.Defendant)

Mr.R.D.Soni with Mr.S.N.Gawade i/b.Ram & Co.
for the Appellant.

Mr.N.V.Walawalkar with Mr.J.Xavier for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 2ND NOVEMBER 2004

P.C.:

. This is a dishonest attempt being made by the Appellant to seek orders to continue with the suit premises despite an undertaking given by his father in 1994 before the City Civil Court that he would remove the offending structure within seven days of the work in respect of the recreation and welfare centre being commenced. Significantly the present Suit has been filed by the Appellant and not his father although the impugned notice is issued to both of them.

2. This litigation has a chequered history. In the year 1985, a notice under Section 351 of the Bombay Municipal Corporation Act was issued to the Appellant's which he challenged in Suit No.829 of 1986. Directions were issued by the trial Court to the Bombay Municipal Corporation (hereinafter referred to as "Corporation") to give the Appellant a hearing and to pass consequential orders. The Deputy Municipal Commissioner concluded that the structure was unauthorised. A Chamber Summons was preferred by the Appellant's father to amend the Plaint by incorporating the order of the Deputy Municipal Commissioner. The Chamber Summons was disposed of by the trial Court, directing the Deputy Municipal Commissioner to give a fresh hearing. On 21st April 1993 the Deputy Municipal Commissioner found that the structure was unauthorised after giving the Plaintiff in that suit a fresh hearing. The Plaint was amended by challenging the order dated 21st April 1993. On 1st March 1994, the trial Court directed the Plaintiff to move the authorities for regularisation of the suit structures. The Suit was withdrawn on that day. An application for regularisation of the suit structure was made wherein it was stated thus : "Proposal for regularisation of unauthorised tin shed constructed by the applicant and this is as per Court's order". In May 1994, the Corporation communicated to the Appellant's father that

it was not possible to regularise the unauthorised structure. This communication was challenged by the Appellant's father by filing Suit No.4264 of 1994. The Appellant undertook through his Advocate on record that within seven days of the receipt of the notice from the Corporation informing him that the work of recreation ground and welfare centre was to be commenced, he would remove himself from the suit premises and on failure to do so, the Corporation would be at liberty to take police help in order to remove the Plaintiff therein from the premises. It appears that the Corporation on 19th November 2003 issued a fresh notice under Section 351 of the Bombay Municipal Corporation Act calling upon the Appellant to show cause why the structure in his possession should not be demolished as it was unauthorised. Not being satisfied with the Appellant's reply, the Corporation decided to initiate further action against him under the Bombay Municipal Corporation Act. Being aggrieved by that notice, the Appellant moved the City Civil Court by filing Suit No.4 of 2003 for an injunction. This injunction was refused and the Appellant therefore moved this Court by filing Appeal From Order No.436 of 2004. On 19th July 2004, the Appeal From Order was disposed of as withdrawn. While allowing the Appellant to withdraw the Appeal From Order, this Court recorded a statement made on behalf of the Corporation that no action would be taken based on the

letter dated 18th December 2003 whereby the Appellant had failed to prove authorisation of the suit structure prior to 1st April 1962. It was also recorded by this Court that the Corporation intended to initiate appropriate action taking into account the previous litigation and the orders passed therein from time to time. This statement was accepted by this Court while reserving liberty to the Appellant to challenge the action of the Corporation.

3. The Corporation then issued the impugned notice on 3rd August 2004 calling upon the Appellant to remove the suit structure from the premises. The notice gives a narration of all the previous litigation between the Appellant and/or his father and the Corporation. The City Civil Court has refused ad-interim injunction and, therefore, the Appellant has approached this Court by way of the present Appeal From Order.

4. It is obvious that the Appellant is attempting to take undue advantage of the delays in Court and the litigation between him and the Corporation. There is no dispute that the father of the Appellant had given an undertaking in 1994 before the City Civil Court to remove himself from the premises once the work of recreation ground and welfare centre was commenced by the Corporation. The Corporation has taken action pursuant

to the undertaking by issuing the impugned notice dated 3rd August 2004. In my view, the action of the Corporation cannot be challenged by the Appellant nor can he seek an interim injunction in his favour. A grievance is made that no hearing has been given to him prior to passing of the impugned order. This is again a frivolous contention raised by the Appellant. When the Appellant's father gave the undertaking it was not conditional upon the Corporation giving him or his father a hearing in respect of the suit structure. The question whether the suit structure is authorised or not is totally independent of the action taken by the Corporation pursuant to the undertaking given by the father of the Appellant. Therefore, this action cannot be impugned by the Appellant nor has he any right to claim a temporary injunction. The impugned notice dated 3rd August 2004 has been issued pursuant to the undertaking given by the Appellant's father in the previous litigation. The Appellant cannot therefore seek a personal hearing when he is called upon to implement the undertaking.

5. Mr.Soni for the Appellant submits that the Appellant has filed a declaratory Suit against his landlord - Best Workers Union and till such time as this Suit is decided, he may be permitted to continue in the suit structure. In the alternative, he submits that Maharashtra Housing and Area Development Authority may be

directed to give him alternative accommodation as they are inclined to do so which is disclosed from the letter dated 2nd July 2004.

6. Whether the Appellant is entitled to any alternative accommodation from Maharashtra Housing and Area Development Authority (MHADA) cannot be decided in the present Suit. Therefore, no directions can be issued to MHADA, especially when it is not a party to the present Suit. If the Appellant has any grievance about not getting alternate accommodation he may voice the same with his landlord or MHADA as the case may be. The Corporation is not bound to give him alternative accommodation. The Corporation is, therefore, entitled to evict the Appellant from the suit structure in accordance with the undertaking given before the trial Court in Suit No.4264 of 1994. I see no reason to interfere with the order of the trial Court. Hence, Appeal From Order dismissed.

7. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1168 of 2004 and the same is disposed of accordingly.

8. Mr.Soni seeks stay of this order for two weeks. I do not think that there is any ground made out to stay

the order when the action of the Corporation has been taken pursuant to the undertaking given by the Appellant’s father before the trial Court. Hence, stay refused.